Supreme Court, U.S.
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91-1126

No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

MICHAEL J. KUTSKO, Petitioner

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE CITY AND COUNTY OF SAN FRANCISCO, Respondent
(DEBORAH L. KUTSKO, Real Party In Interest)

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST APPELATE DISTRICT OF THE STATE OF CALIFORNIA

MICHAEL J. KUTSKO,
P.O. Box 1015
Carnelian Bay, Ca. 96145
(916) 583-1756
PRO SE

QUESTIONS PRESENTED

1. Does the due process clause of the Fourteenth Ammendment to the United States Constitution prohibit a state from denying, solely because of inability to pay court ordered opposing counsel fees, access to it's courts in a divorce case, in view of the basic position of the marriage relationship in society and the state monopolization of the means for dissolving that relationship.

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(Supreme Court Review Denial Order)

(Court of Appeal Writ Denial Order)

(Superior Court Order From Bench)

TABLE OF AUTHORITIES

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Boddie v.State of Connecticut, 401 U.S. 371 5

LIST OF PARTIES

The parties to the proceedings below were Petitioner Michael J. Kutsko, Deborah L. Kutsko, Petitioner's wife in the divorce action, and the Superior Court, State of California, City and County of San Francisco, Honorable Donald B. King trial judge.

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JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3). On June 17, 1991, Petitioner filed a Writ of Mandate And Request For Immediate Stay in the California Court of Appeal challenging the Superior Court's denying him access to the courts in his divorce case. That Writ was summarily denied on August 15, 1991. Thereafter Petitioner filed a Petition for Writ of Review in the California Supreme Court and it was denied by the California Supreme Court on August 28, 1991.

STATEMENT OF THE CASE

This divorce case was filed June 23, 1990, by Petitioner's wife. Shortly thereafter the Superior Court ordered Petitioner to pay wife's attorney $75,000. in fees on account in addition to $10,000. already paid on account by wife. After Petitioner objected to this lavish unearned fee award and filed several Challenges for Bias and Prejudice against the Court, severe animosity arose between Petitioner and the Court and it raised the award to $150,000. After realizing that Petitioner did not have the ability to pay such an awarded the Court administratively and unilaterally suspended all proceedings in Petitioner's divorce case and decreed from the bench (orally on the record but without a written order) that it had never dealt with the merits of Petitioner's case since it had been filed and never would deal with the merits

of Petitioner's case until the attorney's fees were paid, thereby administratively and unilaterally suspending Petitioner's case and denying him his rights to access the courts under the Fourteenth Ammendment to the United States Constitution.

REASONS FOR GRANTING THE WRIT

The Superior courts denial of access to the courts by Petitioner because of inability to pay attorney's fee's (a) raises important and unresolved problems affecting the basic position of the marriage relationship in our society and the state monopolization of the means for dissolving that relationship involving the denial of access to the courts under the Fourteenth Ammendment to the United States Constitution and conflicts and (b) conflicts with decisions of this Court.

In Boddie et. al. v. State of Connecticut 401 U.S. 371, 91 S.Ct. 780, this Court held that in view of the the basic position of the marriage relationship in society and the state monopolization of the means of dissolving that relationship, due process of law prohibits as state from denying, soley because of inability to pay court fees and costs, access to it's courts. This Court stated that " a state may not, consistent with obligations imposed on it by the due process clause, preempt the right to dissolve the legal relationship of marriage without affording all citizens access to the means it has prescribed to do so". This Court went on to state "A state may not make it's judicial process available to some but deny them to others simply because they cannot pay a fee". Here Petitioner cannot pay a fee and is barred from access to the judicial process of dissolving his marriage.

In view of this decision and the fundamental importance of access to the courts as part of societies Fourtheenth Ammendment rights, this Court should make it clear that such invidious discrimination based on lack of ability to pay, should extend not only to court fees and costs but also to court imposed attorneys fees of opposing counsel in a marital dissolution.

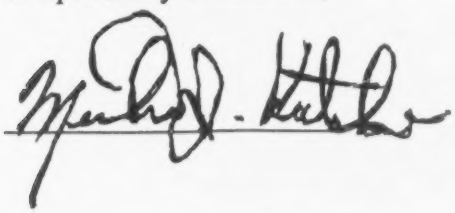
At it's core the right to due process reflects a fundamental value in our American constitutional system and persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. A State ,consistent with the obligations imposed upon it by by the Due Process Clause of the Fourteenth Amendment , should not be allowed to pre-empt the right to dissolve this legal relationship without

affording all citizens access to the means it has prescribed for doing so.

CONCLUSION

This petition for certiorari should be granted because given the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for dissolving this relationship, due process does prohibit a State from denying, solely because of inability to pay, access to it's courts to individuals who seek judicial dissolution of their marriages.

Respectfully submitted,



MICHAEL J. KUTSKO

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APPENDIX

First Appellate District, Division Three, No.

A053990, S022500

IN THE SUPREME COURT OF THE STATE OF

CALIFORNIA

IN BANK

MICHAEL J. KUTSKO, Petitioner

v.

SUPERIOR COURT OF THE CITY AND COUNTY

OF SAN FRANCISCO, Respondent

DEBORAH L. KUTSKO, Real Party In Interest

Application for stay and petition for review

DENIED.

FILED AUGUST 28, 1991 LUCAS

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOR THE FIRST APPELLATE DISTRICT DIVISION THREE

MICHAEL J. KUTSKO, A053990

Petitioner,

vs.

THE SUPERIOR COURT FOR THE COUNTY OF SAN FRANCISCO, Superior Court # 920844

Respondent;

DEBORAH L. KUTSKO,

Real Party In Interest.

BY THE COURT:

Petition for writ of mandate and request for stay are denied. Petitioner discovered the asserted grounds for disqualification at the February 1, 1991 hearing. The disqualification statement filed June 10, 1991, was untimely (Code Civ. Proc. S 170.3(c)(1)

and was properly stricken (Id., S 170.4(b)). (White P.J., Merrill, J. and Strankman, J. participated in the decision).

Dated: August 13, 1991 WHITE P.J.

FROM THE BENCH OF THE SUPERIOR COURT

RE: UNILATERAL ADMINISTRATIVE

SUSPENSION OF PETITIONER'S DIVORCE

CASE

JULY 2, 1991

IN RE MARRIAGE OF KUTSKO NO. 920-844

BEFORE JUSTICE DONALD B. KING, DEPT. X-3

REPORTER TRANSCRIPT OF PROCEEDING

PAGE 17, LINES 1 THROUGH 11

"....and to be perfectly honest with you, although I know Mr. Kutsko doesn't see it this way, getting the funding so that we can get this litigation on the track of dealing with the merits of the action, which we have never done in the year this case has been on file, and we never will until there is some funding so that your office is compensated for what you are doing, so Mr. Sucherman gets some compensation toward everything he's had to do,

including he's had to hire attorneys to represent him in the other actions, there just is no alternative."